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## **Comprehensive Study of One Month of Evictions Filed in Milwaukee County, Wisconsin**

Research undertaken by APARTMENT ASSOCIATION OF SOUTHEASTERN WISCONSIN, INC. (Phase 1)

For further information contact

[hgiese@ameritech.net](mailto:hgiese@ameritech.net) (Heiner Giese, AASEW attorney)

[tim@apartmentsmilwaukee.com](mailto:tim@apartmentsmilwaukee.com) (Tim Ballering, AASEW Board member)

### **Introduction:**

The Apartment Association of Southeastern Wisconsin, Inc. (AASEW) is the largest trade organization representing owners and managers of rental housing in Wisconsin. Data for evictions filed in Milwaukee County has been available online through the Wisconsin Consolidated Court Automation Program (CCAP) for many years. This data is tracked and reported on by organizations such as the Eviction Lab at Princeton University. However, reporting about the online data by academic researchers contains missing or misleading information about many aspects of the eviction process—mainly because individual eviction cases have not been examined in depth.

### **Prior research did not collect all information necessary.**

The biggest unknown is the financial loss sustained by landlords who file evictions, losses both on average and collectively. The reason for this is that many eviction cases are either dismissed (51% in this study), or a money judgment for damages is not sought (only 21% had judgments for any claim other than court costs) and a very small percentage of actual judgments are ever reported to be paid or satisfied (2.9%).

### **This has led to misleading reporting.**

A good example of this is a New York Times story by Emily Badger dated December 12, 2019 - [Many Renters Who Face Eviction Owe Less Than \\$600 - The New York Times \(nytimes.com\)](https://www.nytimes.com/2019/12/12/us/politics/eviction-lab-research.html). That story was based on research furnished by Eviction Lab which showed that some actual eviction judgments entered of record against tenants in several states were less than

\$600. This research failed to consider that many cases involve a dismissal or a decision by the landlord not to pursue an uncollectible claim for unpaid rent—the result being a judgment for only a few hundred dollars in court costs. Conversely, our study showed \$1,436 as the average amount requested in an eviction complaint and \$2,672 as the average judgment granted when actual lost rent and damages were sought.

Another example is the narrative about Milwaukee landlord “Sherrena” presented in Matthew Desmond’s widely read book *Evicted*. The author asserted that she was operating a very lucrative rental property business. However, she had brought over 70 evictions and actually lost all 18 of her properties to mortgage and tax foreclosures several years before the book was published in 2016.

### **Methodology used in our study:**

We selected the month of December 2019 and examined the complete case record and all documents filed in court for that month’s 1,101 residential evictions. We picked December 2019 because it was before the COVID pandemic affected the courts. Also, going back earlier than December 2019 would have omitted cases already removed from online records by the CCAP administrator (which is done for all eviction cases older than two years if a judgment was not entered against a tenant).

In order to get complete case records and numbers, it was necessary to look at the pleadings for each case at the Milwaukee County courthouse. The CCAP information publicly searchable *does not* allow viewing of any pleading or document filed. For example, CCAP will say “5-day Notice filed” but it will not reveal the amount of delinquent rent stated in that notice. We hired Marquette Law School student Jacob Dalton to conduct this research in person at the Milwaukee County courthouse. He had prior experience as a volunteer for the Eviction Defense Project being operated in Milwaukee by Legal Action of Wisconsin. He then compiled his research and created the graphs and tables shown below. His summarization of the data has been supplemented with interpretive analysis by AASEW Board members and AASEW legal counsel Heiner Giese.

This is Phase 1 of a multifaceted review of Milwaukee County evictions.

Phase 2 will include the use of professional researchers to follow up through in-person contacts with landlords and tenants so that missing or uncertain aspects of the study can be resolved.

Phase 3 will be an in-depth study of the impact of Right to Counsel (RtC) in Milwaukee County. We are seeking answers to the following questions: 1) The percentage of RtC cases where the renter rectifies the default and is able to remain in the same unit for at least [3 or 6] months after RtC negotiates a “pay-and-stay” agreement; 2) The length of delay, if any, for cases where the renter is given extra time to move; 3) Typical length of delay in RtC cases compared to other cases; 4) The amount of lost rent owners incur due to delays; 5) Changes in rental practices which owners make after interacting with RtC, i.e., more stringent rental criteria, earlier eviction filings, etc.; 6) Percentages of cases where a) RtC attempted to negotiate with the owner prior to the first hearing, b) RtC attempted to negotiate with the owner while awaiting trial c) RtC attempted to negotiate with the owner during a period of adjournment.

Phase 4 will attempt to quantify the total impact of unpaid rent in Milwaukee County. Eviction judgments are approximately \$12 million per year. We know from this study that eviction judgments represent only a small fraction of the unpaid rent as many owners do not pursue judgments for unpaid rent. It is estimated that the actual unpaid rent in Milwaukee is \$60-100 million annually. Additionally, this study will attempt to quantify the impact the unpaid rent has on the monthly rental rates in Milwaukee as whether this leads to disinvestment.

### **Explanatory note re terminology used in Wisconsin eviction cases**

Some terminology explanations: “Noncompliances” mean a situation where landlord and tenant reached a stipulation which is reduced to writing and filed but then not complied with by the tenant. This would usually be for (1) “pay and stay” where the tenant agrees to catch up on back rent by adding installment payments to future rent or (2) where the landlord agrees to a delayed moveout date (a stay) and a writ is either not issued or is issued with a stayed date. If the tenant defaults or does not comply the landlord files an “affidavit of noncompliance” and the court then issues a writ.

“2<sup>nd</sup> and 3<sup>rd</sup>” refers to the standard format of causes of action stated in an eviction complaint. The 1st cause of action is the demand for possession, the 2nd is the demand for rent and late fees owed and the 3rd is for physical damage or “other” items like an unpaid water bill.

## **I. Description of Data Fields**

In December of 2019, there were 1,101 residential evictions filed in Milwaukee County. These cases had their “return date”—meaning when the case first was heard by a court commissioner—from mid-December through January. Information was obtained utilizing Wisconsin’s Consolidated Court Automation Programs (“CCAP”) to review case histories and the

documents that were filed with the court. Any eviction case which is dismissed without a judgment having been entered is removed from public view on CCAP two years later. This is why December 2019 was chosen, so *all* cases filed in that month could be reviewed.

For each case, there were several basic data points that were specifically sought for every case and entered into the data set: (1) case number, (2) filing date, (3) case name, (4) attorney representing the landlord, (5) attorney representing the tenant, (6) type of notice given, (7) dollar amount stated in the notice, and (8) dollar amount listed in the complaint. The outcome of each case was also obtained, including (1) whether the case was dismissed; (2) if there was a writ ordered and if it was stayed; (3) if there was a stipulated agreement and, if so, whether the tenant was allowed to remain, the agreed upon payment amount, and if the stipulation was complied with; (4) if the tenant's name was sealed; (5) if the writ went to the sheriff; and (6) if the case was sent to a judge after the initial hearing before a court commissioner. Finally, any judgments that were awarded were broken down by (1) the requested amount by the plaintiff (including a breakdown of the itemized damages by category); (2) the judgment that was awarded; (3) the final judgment including costs; and (4) if the judgment was satisfied.

## **II. Methodology**

The original dataset was created using an automatically generated list from CCAP. The information automatically provided included: (1) case number, (2) filing date, (3) case name, (4) if a writ was ordered, (5) date the writ was stayed, (6) if a stipulation agreement was entered, (7) if there was noncompliance with a stipulation, (8) type of notice, (9) if the case was sent to a judge, (10) if the sheriff executed the writ, (11) if the tenant's name was sealed, (12) the judgment amount, (12) the final judgment with costs, and (13) if there was full satisfaction of the judgment. The automatically generated data was rather accurate, but frequently incomplete. For example, if the notice filed was anything other than a 5-day notice or if the notice was attached to the complaint

instead of uploaded separately, then CCAP left the notice section blank. There were some errors in the generated data that most often occurred when a previous decision was vacated later in the court proceedings.

The public records for each case were reviewed utilizing a computer terminal in the Milwaukee County Safety Building which allows users to view copies of any documents that were filed with the court in addition to the court history that is available on the CCAP website. This allowed for specific dollar amounts to be obtained for most notices, complaints, and damage requests. Additionally, viewing the notices and complaints provided details regarding evictions that were not based on unpaid rent. Each case was reviewed in the system utilizing the following sequence: (1) any listed attorneys were documented, (2) the history of the case was read (this provided an understanding of how the case progressed through the court, provided if the writ was stayed if applicable, provided the date of dismissal if applicable, and allowed for the correction of a majority of the inaccuracies in the auto-generated data), (3) the notice was reviewed, (4) the complaint was reviewed, (5) any stipulated agreements were reviewed, (6) any affidavits of noncompliance with stipulated agreements were reviewed, and (7) any requests for damages were reviewed. All dollar amounts listed in the notice, the complaint, and listed damages were recorded.

There were ten cases included in the case list that were identified as commercial leases and removed from the data set. Additionally, there was a single case that had all records sealed that was removed from the data set. In order for a case to be listed as dismissed in the data set, all three causes of actions had to be dismissed. If there was a writ or judgment in a case, it was not listed as dismissed, even if one of the causes was dismissed.

While a vast majority of the information recorded was copied from the associated documents (e.g. the amount listed on the notice was retrieved from the notice filed), some of the data was retrieved from other documents if the primary document was unavailable. For example, if a

document was unavailable (most often the notice), that information may have been available through the case history narrative or another document (such as the complaint). Additionally, plaintiffs had different ways of listing damages (such as including late fees into their unpaid rent estimates instead of separately) so while the total requested amounts are accurate, the sub-categories of listed damages may not be exact.

After all the available data were recorded, some basic analysis was run on the data. This included a summation of the number of cases that had attorneys, dismissals, writs, stipulation agreements, noncompliance, were sent to the judge and the sheriff, were sealed, were given judgments, were given judgments with costs, and had full satisfaction of judgments; as well as the percentage of each category's frequency to the total number of cases (the exception being noncompliance, which was a percentage to the number of stipulated agreements, and the reasons for noncompliance). Additionally, for each data set that had a dollar amount, the mean, median, minimum, and maximum amounts were calculated.

### **III. Results**

Upon initial review of the data available, there are several patterns that readily appear in the data. This section will first review patterns in the categories that were not recorded as dollar amounts and then in the categories that were recorded in dollar amounts.

First, the number of cases where attorneys represented the landlord (626 cases and 56.9% of total cases) far outweighed the number of cases where tenants were represented (34 cases and 3.1% of total cases). Regarding the final disposition of cases, a majority of the cases filed were dismissed (559 cases and 50.8% of total cases) either by stipulation, at the plaintiff's request, or by judgment. However, a significant portion of cases resulted in a writ (465 cases and 42.2% of total cases). There were a small number of cases where the first cause of action was dismissed without a writ, but there was a money judgment issued in the second and third causes (77 cases and 7.0% of total cases).

Almost half the cases had a stipulation agreement at some point in the proceedings (525 cases and 47.7% of total cases). Of the stipulation agreements entered, tenants were offered the opportunity to stay at the residence in at least 360 of the 525 agreements (68.6% of agreements) and were ordered to vacate by a specific date in at least 159 of the 525 agreements (30.3% of agreements). There was a payment schedule in 401 of the 525 stipulations (76.4% of agreements). There were six stipulation agreements listed in the case histories that provided no details regarding what the agreement entailed. The landlord returned to court with an affidavit of noncompliance 164 of the 525 times (31.2% of agreements). The noncompliance was often due to failure to make a payment on time (134 instances and 81.7% of the total noncompliance) with a majority of the remainder being due to failure to vacate by the agreed date (28 instances and 17.1% of the total noncompliance) and only two being due to failing to both pay and vacate (1.2% of the total noncompliance).

Cases which began with a five-day notice were the overwhelming majority (1023 instances, making up 92.9% of total cases). There were 150 cases that were sent to the judge, either as a contested hearing or for a decision on a motion (13.6% of cases). The sheriff was utilized to execute the writ 189 times (17.2% of total cases and 40.6% of the times a writ was issued). The tenant's name was sealed in 59 cases (5.4% of total cases).<sup>1</sup>

There were judgments with costs issued in 484 cases (44.0% of total cases), with only 231 of the cases having a money judgment for the landlord granted *in addition* to costs (21.0% of total cases). This is a key finding. In 56% of the total cases there is *no* judgment entered, although the landlord obviously incurred costs in filing the case. Some were stipulations where the tenant paid the arrears and continued as a resident. But in many others the landlord simply chose not to pursue an uncollectible judgment. Also significant is the question of how much rent was lost in the 231 cases

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<sup>1</sup> When viewed in December 2021, there were two cases with pending motions to seal.

involving only a judgment for costs. The Clerk of Court noted a full satisfaction of judgment in only 14 cases (2.9% of cases with money judgments).

**Table 1** lists the average, median, maximum, and minimum dollar amounts for the notice, complaint, requested judgment, granted judgment, and judgment including costs. The “Judgment” amount only includes judgments that were granted in the second and third cause of action, while the “With Costs” amount includes both judgments from second and third causes of actions with costs and cases where the only judgments were the court costs. There were 253 cases with judgments for court costs only (52.3% of cases with judgments), so the average and median numbers for judgments with costs are noticeably lower than the judgment amounts. **Figure 1** and **Figure 2** show the data as box and whisker plots without and with the outliers respectively.

**Table 1.**

	<b>Notice</b>	<b>Complaint</b>	<b>Requested<sup>2</sup></b>	<b>Judgment</b>	<b>With Costs</b>
<b>Mean</b>	\$1,242	\$1,436	\$3,178	\$2,672	\$1,559
<b>Median</b>	\$945	\$1,075	\$2,518	\$2,156	\$388
<b>Max</b>	\$12,807	\$16,750	\$13,743	\$9,799	\$10,217
<b>Min</b>	\$8	\$50	\$(134)	\$158	\$90

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<sup>2</sup> There was a single case where the requested damages totaled negative due to the deposit being larger than the amount outstanding. However, after court costs the judgment was larger than the remaining deposit.

Figure 1.

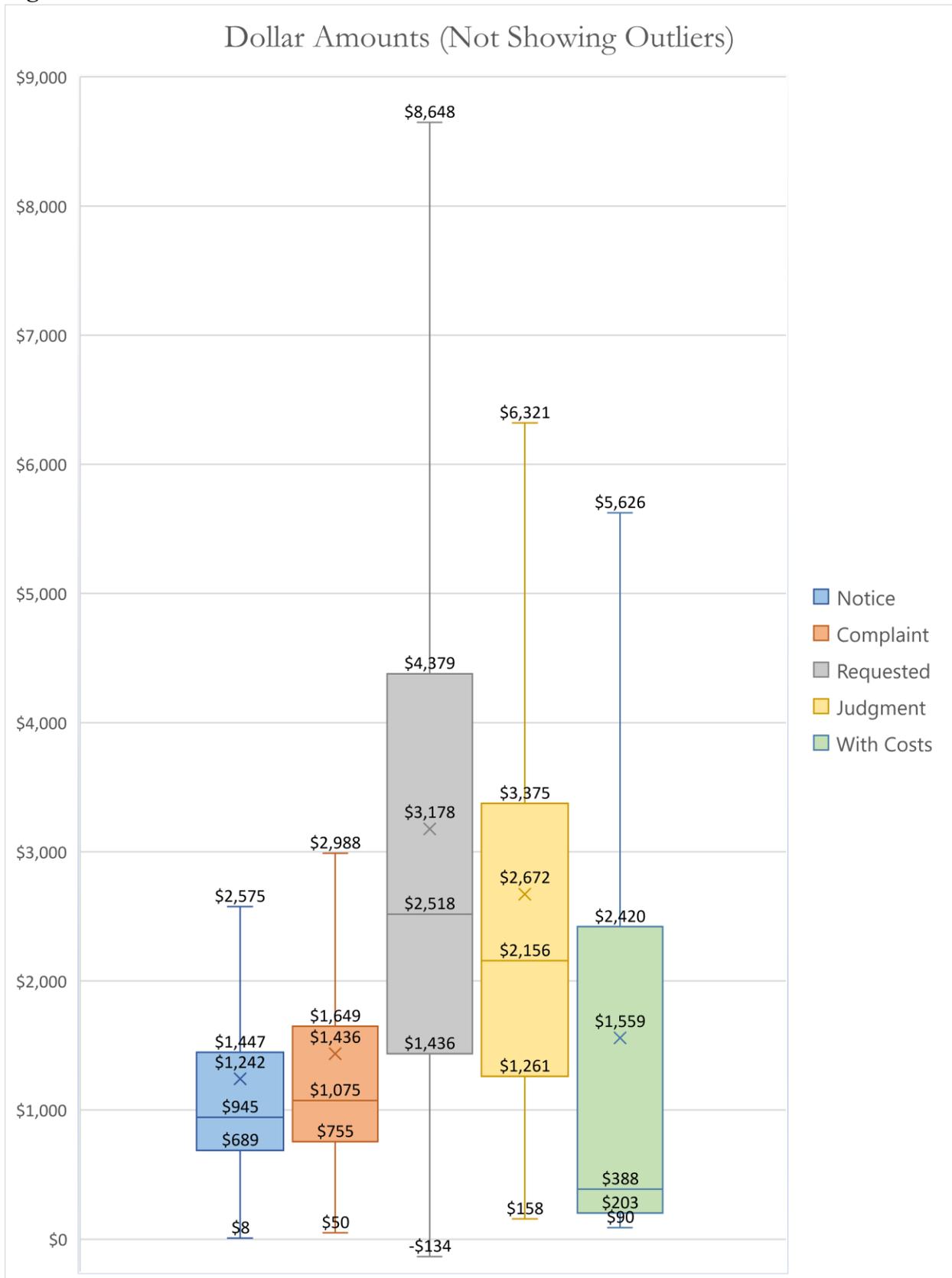
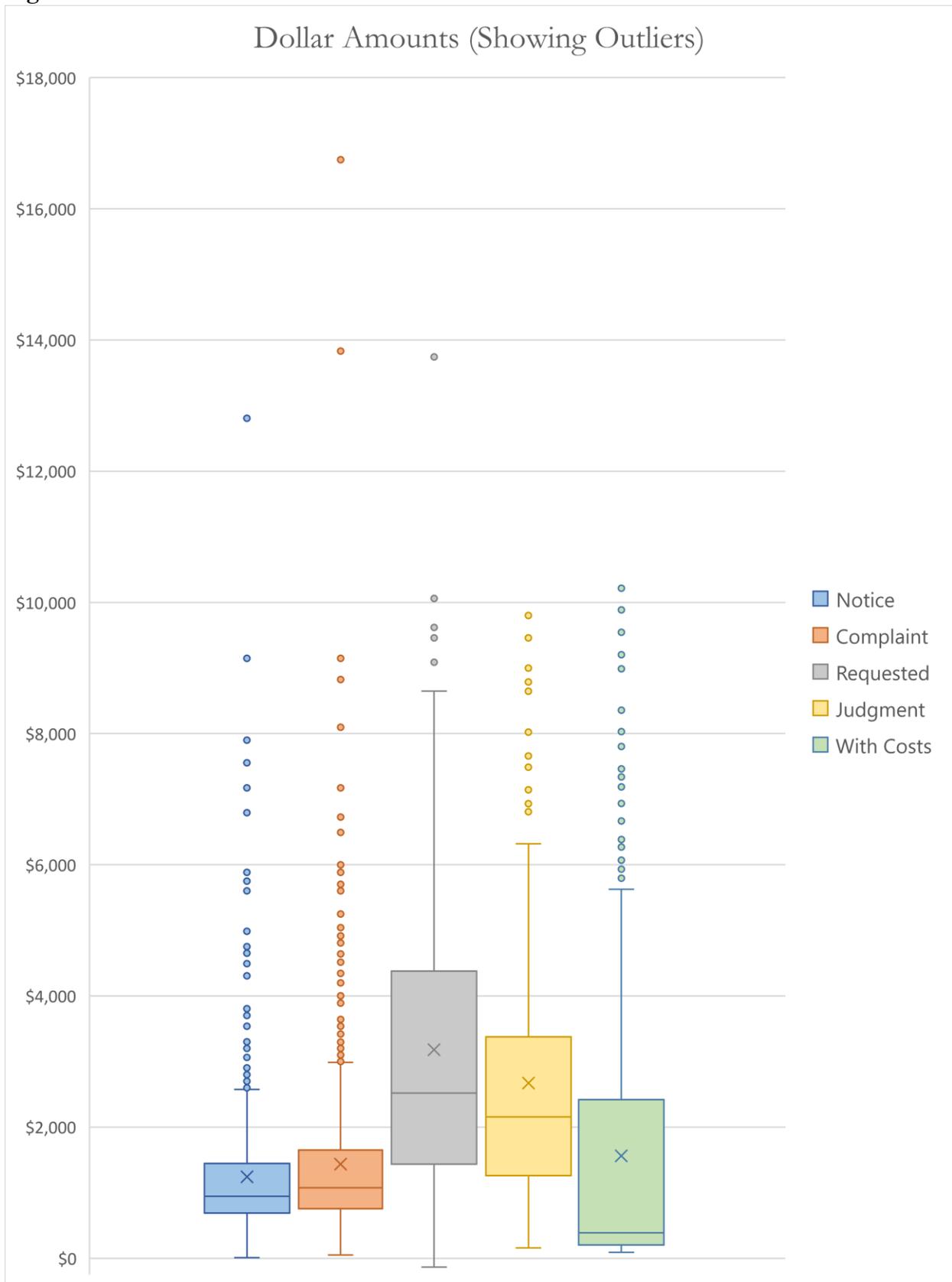


Figure 2.



There was information available for the plaintiff's requested judgment amount in 205 cases (18.6% of the total cases and 88.7% of cases where a money judgment was issued). Of the cases with a requested judgment amount, 181 of them had a full breakdown of the damages requested by category. For the twenty-four cases that had a requested judgment amount without a breakdown by category, the amount requested was reported as the same as the amount listed in the complaint.

**Table 2** shows the mean, median, maximum, and minimum dollar amounts used to calculate the requested damages amount for those cases with a full breakdown by category. The categories that were used were rent, fees, holdover damages, physical damages, other,<sup>3</sup> and the deposit amount (which was subtracted from the other amounts).

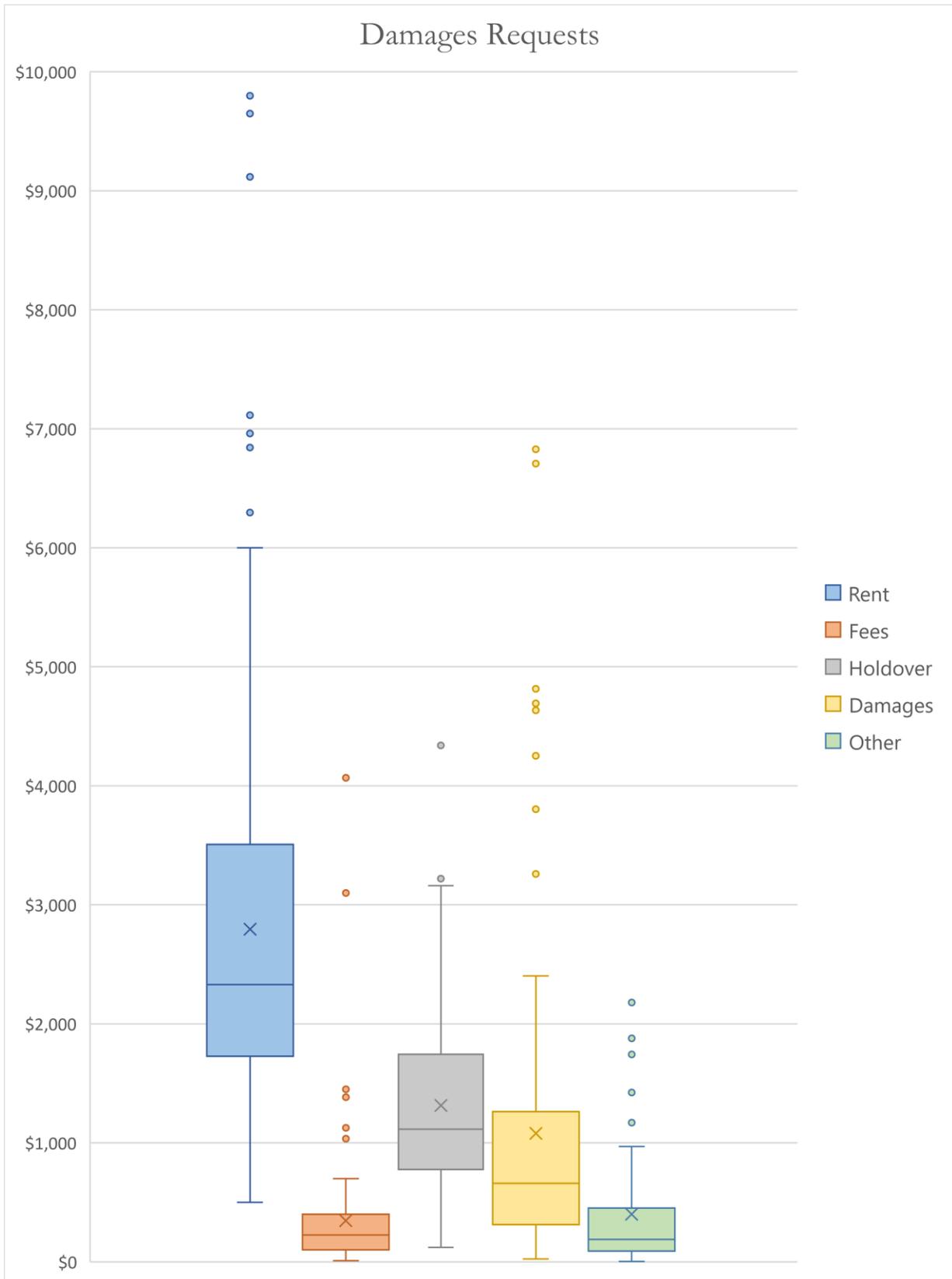
Rent damages were requested most often, with requests in 179 cases (98.9% of cases with breakdowns available), fees were requested in 114 cases (63.0% of cases with breakdowns available), holdover damages were requested in 60 cases (33.1% of cases with breakdowns available), physical damages were requested in 104 cases (57.5% of cases with breakdowns available), and other damages were requested in 49 cases (27.1% of cases with breakdowns available). Deposits were included in the request breakdowns in 167 cases (92.3% of cases with breakdowns available). **Figure 3** shows the data as a box and whisker plot.

**Table 2.**

	Rent	Fees	Holdover	Physical	Other	Deposit	Total
Mean	\$2,794	\$347	\$1,314	\$1,078	\$401	\$782	\$3,178
Median	\$2,329	\$225	\$1,114	\$660	\$189	\$703	\$2,518
Max	\$9,799	\$4,068	\$4,340	\$6,827	\$2,179	\$2,500	\$13,743
Min	\$500	\$10	\$122	\$25	\$4	\$99	\$(134)

<sup>3</sup> Included less frequent categories like outstanding parking fees, utility bills, or other one-time charges that did not fit into the other listed categories.

Figure 3.



## IV. Discussion

There are several considerations to take into account while reviewing the results found from the data available. All of the data considered in this project is compiled from a single month's filings. However, December 2019 was chosen to be an accurate representative due to its pre-COVID status and was therefore only minimally affected by pandemic procedures that disrupted later court proceedings in the spring of 2021 when money judgments for damages were being sought. In fact, eviction filings for the month of December in years 2016-2019 are lower than the average of all months—likely due to the holiday factor.

### A. Nonpayment Notices Generate Evictions

**Our research establishes that an overwhelming majority of eviction proceedings were due to unpaid rent.** Almost all the five-day notices listed unpaid rent as the sole reason for eviction. There were only eleven cases where the notice and the complaint listed a cause of action that did not include unpaid rent and only ten cases where the notice and the complaint listed an additional cause besides unpaid rent. A majority of the cases that did not request any money damages in the notice or complaint were evictions based on 14-, 28-, or 30-day notices. Of the cases that had a second cause besides unpaid rent, approximately half alleged violent behavior or threats. However, it is likely that there were cases where the landlord had additional causes for eviction besides unpaid rent but did not list them in the complaint. In those cases, unpaid rent was likely the easiest violation to prove and there may not be a reason to try to pursue an additional cause of action that would require additional evidence and testimony if the eviction would be granted for unpaid rent alone. Exploration of the reasons for initiating eviction proceedings would likely require a project involving interviewing landlords involved in evictions proceedings to discover any undisclosed secondary reasons for evictions.

## **B. Stipulation Agreements**

Stipulations appear to be popular options for resolving eviction proceedings and accounted for a majority of case dismissals. **The stipulations indicate landlords are over twice as likely to allow a tenant to remain in the unit (contingent on a successful payment plan)<sup>4</sup> than to require they vacate if a stipulation is agreed to.** Noncompliance rates were reported in about a third of the stipulated cases. However, this number would not include any instances of noncompliance that were not reported to the court. It is likely that noncompliance rates are higher than listed, but the landlord chose not to return to court or an alternate arraignment was agreed to outside the court. For example, if a tenant stopped paying rent arrears per a stipulation and simply moved, the landlord would be unlikely to return to court with a noncompliance affidavit simply to get a money judgment. A significant portion of the noncompliances were due to missed payments, while tenants that agreed to vacate the units were compliant more than 80% of the time.

The data collected for the stipulations' agreed payment amounts were not very informative due to the varying nature of how the amount was calculated. Because there is no standardized method for calculating stipulated agreement amounts, a comparison of the overall amounts was inconsistent. It is likely that a separate in-depth research project focusing solely on stipulations would be required to produce meaningful results about how stipulated agreement amounts are calculated.

## **C. Damages**

Regarding the amount of damages associated with evictions, the data yields several interesting results. Almost half of the notices posted to begin the eviction process were for \$1,000 or more. This is relevant to the false narrative that “many evictions are filed for only a few hundred

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<sup>4</sup> There were a very limited number of stipulations that allowed the tenant to stay without a payment plan, but the stipulations were contingent on other factors, such as completing a mental health program or eradicate a pest control issue within a certain timeline.

dollars” which is often claimed by tenant advocates. By the time a complaint was filed to bring the eviction to court, more than half of them claimed over \$1,000 in damages. Of the cases with a writ issued, only approximately half of plaintiffs pursued claims to recover for damages in the second and third causes of action. If a writ needed to be issued it would be very likely that there is a rent loss—so half of landlords don’t even try to recover any money. The median amount of damages awarded after the second and third cause of action was not only higher than the amount listed on the complaint, but actually doubled the median amount listed on the complaints. However, when all judgments (including those that only reimburse plaintiffs for the court costs) are taken into account, the judgment amount declines sharply with most awards totaling under \$400. This sharp juxtaposition in the amounts awarded in a judgment should be considered when reviewing what the “average” judgment awarded is. Including the numerous judgments for “costs only” in the category of judgments awarded based on second and third causes of action artificially depresses the true amount of damages sustained.

When reviewing the requested damages, it becomes clear that unpaid rent is far and away the largest category. Additionally, it was the category that was most likely to be granted in the final judgment. Often when the judgment was less than the requested amount, the unpaid rent was granted, but certain fees or physical damages were not included in the judgment. This could be due to evidentiary difficulties, where it is likely easier to prove the amount owed due to a fixed monthly rent than one-time expenses. Therefore, a more accurate representation of how much landlords have lost in revenue is likely the requested amount of damages or the judgments awarded based on those requests. It is unlikely that a judgment of less than \$400 is representative of damages incurred when the original notices are usually for more than twice that \$400.

Finally, the data suggests that only fourteen of the judgments (2.9% of all judgments) were satisfied at the time of this study. This comports with previous examination of CCAP records by

AASEW where it was found that only 2.5% of 2015 eviction judgments in Milwaukee County had been satisfied six years later.

## V. Conclusions Derived from Data; Further Research

There are several results prevalent enough to extend beyond only December 2019's data.

**The great majority of evictions are brought for unpaid rent**, which is also the main expense and most asked-for relief by landlords. Stipulations seem to be an effective method of resolving eviction cases, especially in having a tenant vacate the premises without issuance of a writ (over 80% compliance). Again, it must be emphasized that *including judgments for costs only* in any analysis significantly reduces the mean and median of judgment amounts and **does not present an accurate representation of the monetary losses landlords sustain when bring an eviction action.**

There are additional “economics” of the eviction process which are *not* discernible by looking at this case data:

1. We need to learn what landlords paid *their* attorneys in *actual* legal fees. Wisconsin law does not allow landlords to recover that actual cost as part of an eviction judgment.

2. What about the landlord's own time if they pursue an eviction without legal counsel? What is that worth? What about overhead costs of landlord's staff or property management company in preparing all the pre-eviction paperwork, arranging for service of process, and sending an agent to court to handle the eviction?

3. What are the true costs of unit turn-around after an eviction? For example, say landlord gets a judgment for all rent due up to the date a writ is executed, say the 31<sup>st</sup>, end of month. And let's say the unit is damaged, which costs \$1000 to repair. Yes, landlord can get a judgment for that rent and for those physical damages when there is a hearing on the 2<sup>nd</sup> and 3<sup>rd</sup>, but landlord will *not* recover the lost rent for the month's time it takes to restore the unit. The execution of the writ cuts off any claim for additional lost rent due to the tenant leaving the unit in poor condition.

4. What is the total economic cost of evictions due to unpaid rent? To what extent are these costs borne by other renters in similar economic circumstances?

This analysis of a full month of eviction cases also illustrates a faulty narrative which is promoted by many national “Right to Counsel” advocates. They often claim that “if only” tenants had access to legal counsel they could “fight” their landlord in court and they could “win” their case, get the eviction dismissed and continue as renters. This can be true for the very rare case involving a landlord who has brought an eviction because the tenant complained to health or building code authorities. But our research showed that over 92% of evictions were based on nonpayment of rent. Many other studies in other jurisdictions have also shown that nonpayment of rent is the reason for an eviction in 90%+ of the cases. There is, ultimately, no *effective, permanently dispositive* defense to such a case. If tenant’s counsel argues a defect in service of the eviction notice, for example, yes, that case will get dismissed. But the landlord will just refile and now the tenant has *two* eviction cases in the public records and will have an even harder time securing new housing. It should be obvious that tenants cannot **win** a nonpayment case: it can only be **settled** with the landlord—and then hopefully dismissed, which many landlords do agree to.

Our Association strongly promotes *pre-filing mediation* as a solution to the trauma of evictions. And if a case does get to court, the *effective* role of the “Right to Counsel” advocate will be to either divert that case to mediation or to negotiate a “pay and stay” stipulation or to negotiate a prompt move-out in exchange for the landlord dismissing the case and not seeking a money judgment.

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